

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF MASSACHUSETTS

DAVID P. FONTAINE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil No. 04-30080-MAP
	)	
UNITED STATES OF AMERICA, ET AL.,	)	
	)	
Defendants.	)	

UNITED STATES' MOTION TO DISMISS

The United States, by undersigned counsel, hereby moves to dismiss this action pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

Plaintiff has failed to state a claim upon which relief can be granted, failed to establish subject matter jurisdiction over this proceeding, and failed to establish a waiver of the United States' sovereign immunity. A supporting memorandum is submitted herewith.

Respectfully submitted,

MICHAEL J. SULLIVAN  
United States Attorney

/s/ Lydia D. Bottome  
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that, on this 3<sup>rd</sup> day of June, 2004, a copy of the foregoing United States' Motion to Dismiss was filed electronically. Notification of this filing will be sent to each counsel via the electronic filing system. A copy of this document will also be sent to all parties and counsel who have entered an appearance by first class mail.

/s/ Lydia D. Bottome  
LYDIA D. BOTTOME

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